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**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:  PHILIP JAMES LAYFIELD,  Debtor.	) Case No. 2:18-bk-15829-NB ) ) Chapter 7 ) ) Hon. Neil W. Bason ) ) <b>REPLY IN SUPPORT OF</b> ) <b>WELLGEN STANDARD, LLC'S</b> ) <b>MOTION FOR SUMMARY</b> ) <b>JUDGMENT</b>  DATE: December 6, 2018 TIME: 10:00 A.M. CTRM: 1545 255 E. Temple Street Los Angeles, California 90012
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1           **TO THE HONORABLE NEIL W. BASON, UNITED STATES**  
2           **BANKRUPTCY COURT JUDGE, THE OFFICE OF THE UNITED STATES**  
3           **TRUSTEE, THE DEBTOR AND PARTIES IN INTEREST:**

4           On May 21, 2018, Wellgen Standard, LLC ("Wellgen"), successor in interest to  
5           Advocate Capital, Inc. ("Advocate"), Alliance Legal Solutions, LLC ("Alliance"), and  
6           Richard M. Pachulski, Chapter 11 Trustee (the "L&B Trustee") of Layfield & Barrett,  
7           APC ("L&B") filed an involuntary petition (the "Involuntary Petition") against the  
8           alleged debtor, Mr. Philip James Layfield ("Mr. Layfield"). On October 30, 2018,  
9           Wellgen moved for summary judgment and for entry of the order for relief requested in  
10          the Involuntary Petition ("Wellgen's Summary Judgment Motion"). (Docket No. 100.)

11          On November 27, 2018, Mr. Layfield filed his Opposition to Wellgen's Motion  
12          for Summary Judgment ("Mr. Layfield's Opposition"), his Statement of Genuine Issues  
13          of Material Fact in Opposition to Wellgen's Motion for Summary Judgment ("Mr.  
14          Layfield's Statement of Facts"), and his Objections to Evidence Filed by Wellgen in  
15          Opposition to Wellgen's Motion for Summary Judgment ("Mr. Layfield's Evidentiary  
16          Objections"). (Docket Nos. 131, 132 and 133.) Attached hereto as Exhibit A are  
17          excerpts from Mr. Layfield's Deposition on November 27, 2018 ("Layfield Dep.").

18          Wellgen files this reply in support of Wellgen's Summary Judgment Motion (the  
19          "Reply"). In support of this Reply, Wellgen submits the following Memorandum of  
20          Points and Authorities.  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STANDARD OF REVIEW**

Summary judgment is warranted under Fed. R. Civ. Pro. 56(a) “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50 (1986). Where, as here, the moving party has carried its initial burden of informing the court of the basis for its motion and of identifying those portions of the record that demonstrate the absence of a genuine issue of material fact, the burden shifts to the nonmoving party to “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256.

If the moving party shows that there are no genuine issues of material fact, the non-moving party must go beyond the pleadings and designate facts showing an issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). A scintilla of evidence or evidence that is merely colorable or not significantly probative does not present a genuine issue of material fact. The underlying substantive law governing the claims determines whether or not it is material. ... There must be enough doubt for a “reasonable trier of fact” to find for [non-moving party] in order to defeat the summary judgment motion.

*Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9<sup>th</sup> Cir. 2000). The non-moving party may not rest on mere allegations or denials. Instead, the nonmoving party must tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that the dispute exists. *See* Fed. R. Civ. P. 56(c)(1); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 n.11 (1986). Conclusory and speculative affidavits that fail to set forth specific facts are insufficient to raise a genuine issue of material fact. *See, e.g., Far Out Productions, Inc. v. Oskar*, 247 F.3d 986, 997 (9<sup>th</sup> Cir. 2001); *Thornhill Publ’g Co., Inc. v. Gen. Tel.*

1 & *Elecs. Corp.*, 594 F.2d 730, 738 (9th Cir. 1979). Conclusory statements in an  
2 affidavit will not defeat a motion for summary judgment. *Yufa v. TSI Inc.*, 2014 WL  
3 11398761, \*4 (C.D. Cal. 2014). fa

4 **II. MR. LAYFIELD'S EVIDENTIARY OBJECTIONS**

5 Mr. Layfield objects to Wellgen's reliance on various pleadings filed in  
6 *Advocate Capital, Inc. v. Layfield*, Case No. SACV 17-01628 AG (DFM) (C.D. Cal.  
7 2017) (the "District Court Action"). Mr. Layfield objects to Wellgen's reliance on  
8 Docket Nos. 1, 35, 41, 50, 52 and 53, which consist of the complaint, default judgment,  
9 Advocate's assignment of its default judgment to Wellgen and the pleadings related to  
10 Mr. Layfield's efforts to set aside the default judgment. Mr. Layfield's objection to  
11 these docket entries is frivolous given that Mr. Layfield admits that the default  
12 judgment was entered, that he filed, and the District Court denied, his first motion to set  
13 aside the default judgment and that he recently filed a second motion to set aside the  
14 default judgment. (Mr. Layfield's Evidentiary Objections at pp. 5-7.) Mr. Layfield's  
15 Declaration, which is attached to Mr. Layfield's Statement of Facts, admits that the  
16 default judgment was entered and that Mr. Layfield has moved to set the default  
17 judgment aside based on an alleged lack of proper service. (Mr. Layfield's Decl. at  
18 ¶ 12.)

19  
20  
21 Even in the absence of Mr. Layfield's admissions, Fed. R. Civ. Pro. 56(c)(1) and  
22 (2) permit the moving party to rely on any documents and other materials as long as the  
23 documents and other materials can be presented in a form that would be admissible in  
24 evidence. Docket Nos. 1, 35, 41, 50, 52 and 53 are admissible in evidence under Rule  
25 Fed. R. Evid. 201. Pleadings filed and orders issued in related litigation are proper  
26 subjects of judicial notice under Rule 201. *See Reyn's Pasta Bella, LLC v. Visa USA*,



1 *Inc.*, 442 F.3d 741, 746 n. 6 (9th Cir. 2006) (“We may take judicial notice of court  
2 filings and other matters of public record”); *In re Zulueta*, 520 Fed.Appx. 558, 559 (9th  
3 Cir. 2013) (taking judicial notice of the docket in an underlying bankruptcy  
4 proceedings); *Rodriguez v. Disner*, 688 F.3d 645, 660 n. 11 (9th Cir. 2012) (taking  
5 judicial notice of briefs filed in related case); *Roberson v. City of Los Angeles*, 220  
6 Fed.Appx. 522, 523 (9th Cir.2007) (taking judicial notice of the state court docket sheet  
7 in the underlying action); *Asdar Group v. Pillsbury, Madison & Sutro*, 99 F.3d 289, 290  
8 n. 1 (9th Cir. 1996) (court may take judicial notice of the pleadings and court orders in  
9 earlier related proceedings); *Madden v. Cate*, 2013 WL 5741781, \*3 n.5 (C.D. Cal. Oct.  
10 22, 2013) (taking judicial notice of the California Supreme Court docket); *Rosal v. First*  
11 *Fed. Bank of California*, 671 F.Supp.2d 1111, 1120–21 (N.D. Cal. 2009) (taking  
12 judicial notice of plaintiff’s bankruptcy petition, an order granting a motion for relief  
13 from the automatic stay, and the bankruptcy court’s order of dismissal); *Retired*  
14 *Employees Ass’n of Orange County, Inc. v. County of Orange*, 632 F.Supp.2d 983, 985  
15 (C.D. Cal. 2009) (taking judicial notice of a bankruptcy court order under Rule 201).

16  
17  
18 Even if this Court were to exclude Docket Nos. 1, 35, 41, 50, 52 and 53, the fact  
19 that Advocate obtained a default judgment against Mr. Layfield, the amount of the  
20 default judgment and Advocate’s assignment of the default judgment to Wellgen are all  
21 set forth in detail in the Declaration of Paul Myers previously filed in this case (Docket  
22 No. 102) (“Mr. Myers’ Declaration”) and the Declaration of Dan A. Taussig previously  
23 filed in this case (Docket No. 73) (“Mr. Taussig’s Declaration”). The facts set forth in  
24 Mr. Myers and Mr. Taussig’s Declarations are undisputed. Thus, the exclusion of  
25 Docket Nos. 1, 35, 41, 50, 52 and 53 would not impact Wellgen’s entitlement to  
26 summary judgment.  
27  
28

1 Mr. Layfield also objects to Wellgen's reliance on the Decision and Order of  
2 Involuntary Inactive Enrollment entered by the California State Bar Court on May 18,  
3 2018 (the "State Bar Court Order"), the Minute Order entered March 28, 2018 (the  
4 "Minute Order"), by the California Superior Court, County of Orange, in the matter  
5 entitled *Josephine Nguyen v. Philip Layfield*, Case No.: 30-2017-00930393-CU-BC-  
6 CJC (the "Nguyen Proceeding"), and the Affidavit of Mark E. Speidel (the "Speidel  
7 Affidavit").<sup>1</sup> The State Bar Court Order, the Minute Order and the Speidel Affidavit are  
8 all the subject of the Request for Judicial Notice of Petitioning Creditor, Richard M.  
9 Pachulski, filed in this case (Docket No. 83) and are all admissible under Fed. R. Civ.  
10 Pro. 56(c)(1) and (2) and Fed. R. Evid. 201.

12 Mr. Layfield's *sole* argument is that this Court cannot take judicial notice of the  
13 various pleadings because they have not been authenticated by a custodian of records.  
14 Official public records do not require such authentication. Judicial notice is appropriate  
15 where the document is an official public document "capable of accurate and ready  
16 determination" and "not subject to reasonable dispute." Fed. R. Evid. 201(b); *see*  
17 *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (finding it  
18 appropriate to take judicial notice of information made publicly available on  
19 government websites where the authenticity of the information was not challenged)  
20 *Gerritsen v. Warner Bros. Entertainment Inc.*, 112 F.Supp.3d 1011, 1033-34 (C.D. Cal.  
21 2015) (same). Here, all the pleadings to which Mr. Layfield objects are publicly  
22 available on government websites and at government offices, the authenticity of each  
23  
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25  
26 <sup>1</sup> At his recent deposition, Mr. Layfield expressly relied on Mr. Speidel's Affidavit with respect to his  
27 travel between Costa Rica and California and the amounts owed to L&B's clients. (Layfield Dep. at pp.  
28 68, Line, 4-70, Line 9.)

1 pleading is capable of accurate and ready determination, and Mr. Layfield has not  
2 challenged the authenticity of any of the pleadings to which he objects. No  
3 authentication is required.

4 **III. MR. LAYFIELD'S DECLARATION**

5 The only evidence offered by Mr. Layfield is his Declaration, which consists  
6 almost entirely of conclusory statements that would not survive a motion to dismiss  
7 under Fed. R. Civ. Pro. 12(b)(6), let alone defeat a motion for summary judgment.  
8

9 **A. Wellgen's Claim**

10 Mr. Layfield's Declaration does not dispute or contradict any of the facts set  
11 forth in Mr. Myers' and Mr. Taussig's Declarations except Mr. Layfield claims he does  
12 not believe that the Amended and Restated Master Loan and Security Agreement  
13 executed by L&B and dated August 7, 2016, was actually executed by L&B on August  
14 7, 2016. (Layfield Decl. ¶ 3.) Mr. Layfield believes that L&B executed the Amended  
15 and Restated Master Loan and Security Agreement sometime after August 7, 2016.  
16 (*Id.*)  
17

18 Mr. Layfield's Declaration contains the conclusory allegations that Advocate  
19 was "prohibited from falsifying a proof of service," that Advocate "cooperated" with  
20 Mr. Wakefield and Mr. Barrett in inflicting harm on Mr. Layfield, that Mr. Layfield was  
21 not personally served with Advocate's complaint "in Marina del Rey," that Advocate  
22 and the Chapter 11 Trustee for L&B "have engaged in self-dealing and have wasted the  
23 L&B estate assets for their own benefit." (Layfield Decl. ¶¶ 5, 7, 9 and 12.) None of  
24 these conclusory allegations are supported by any facts or detail. (*Id.*) Mr. Layfield also  
25 states his legal conclusion that Wellgen's default judgment is void. (*Id.*, ¶ 12.) Mr.  
26 Layfield's conclusory allegations and legal conclusions do not set forth any specific  
27  
28

1 facts and are insufficient to raise a genuine issue of material fact. *See, e.g., Far Out*  
2 *Productions*, 247 F.3d at 997; *Thornhill Publ'g Co.*, 594 F.2d at 738. Conclusory  
3 statements in an affidavit will not defeat a motion for summary judgment. *Yufa*, 2014  
4 WL 11398761, \*4.

5 Mr. Layfield's Declaration admits that he guaranteed repayment of Advocate's  
6 loan to L&B but claims he did not execute the Guaranty on December 17, **2017**.  
7 (Layfield Decl. ¶ 4.) However, Mr. Layfield does not dispute Paragraph 12 of Mr.  
8 Myers' Declaration, which provides as follows:  
9

10 On December 17, **2015**, Mr. Philip J. Layfield ("Mr.  
11 Layfield") executed a Guaranty in favor of Advocate  
12 ("Guaranty"). A copy of the Guaranty is attached to the  
13 Complaint as Exhibit B. Under the Loan Agreement and  
14 the Guaranty, Mr. Layfield guaranteed payment and  
15 performance of L&B's indebtedness and obligations  
under the Loan Agreement (the "Obligations") and agreed  
that he would be jointly and severally liable for the  
Obligations.

16 (Docket No. 102, ¶ 12 (*emphasis added*).)

17 Mr. Layfield claims that he reviewed the Guaranty attached as Exhibit B to Mr.  
18 Myers' Declaration, and that the Guaranty does not contain a waiver of suretyship  
19 defenses including impairment of recourse and impairment of collateral. (Layfield  
20 Decl. ¶ 6.) Mr. Layfield's claim is simply false. The Guaranty provides as follows:

21 This Guaranty is and will continue to be absolute and  
22 unconditional. I knowingly waive any and all claims,  
23 counterclaims and defenses that I may now and in the  
24 future have against Borrower, or you, or against all  
Additional Guarantors, that may cause you to lose any of  
25 your rights against me or against my property or assets, or  
require you to marshal collateral or otherwise order or  
26 defer the exercise of your rights. This includes waiver or  
any exemptions from seizure, and of borrower/guarantor  
27 defenses and creditor claims generally, that I might  
otherwise be entitled to assert under applicable law. I am  
28

1           waiving: (a) notice of your acceptance of this Guaranty;  
2           (b) any right to o require you to notify me of any  
3           nonpayment relating to the Obligations, or any Collateral  
4           securing the Obligations, and any other action or inaction  
5           on your part, or by Borrower or any Additional  
6           Guarantor; ***(c) any rights to require you to proceed***  
7           ***against Borrower, or any Additional Guarantor, or any***  
8           ***Collateral securing the Obligations before proceeding***  
9           ***against me, or to exorcise diligence to the extent you***  
10           ***may so proceed;*** (d) any right to require you to notify  
11           me or to obtain my consent to any change in the terms  
12           and conditions relating to the Obligations, including  
13           without limitation, any change in the terms of  
14           repayment, any release or substitution of Collateral, or  
15           any release, substitution of any party or parties that may  
16           be liable for repayment; (e) any “one action” or “anti-  
17           deficiency” law or other law which may prevent you from  
18           bringing an action against me, including, without  
19           limitation, a claim for deficiency before or after or in lieu  
20           or your commencement or completion of any collection or  
21           foreclosure action; ***(f) any election of remedies or other***  
22           ***actions or inaction on your part that may impair your***  
23           ***recourse against any collateral, my rights of***  
24           ***subrogation, or my rights to obtain reimbursement from***  
25           ***or against Borrower, or against any Additional***  
26           ***Guarantor, including without limitation, any loss or my***  
27           ***rights by reason of any law limiting, qualifying, or***  
28           ***discharging the Obligations;*** (g) any statute of limitations  
if at any time you file suit against me there is any  
outstanding Obligation which may be barred by any  
applicable statute of limitations; (h) any disability or other  
defense that Borrower, or any Additional Guarantor, or  
any other person, may assert against you with regard to  
payment of the Obligations; and (i) any rights that I may  
have to require Borrower or any Additional Guarantor to  
provide me with collateral security.

(Myers Decl., Ex. B, at pp. 3 and 4 (*emphasis added*).) The Guaranty is governed by  
Tennessee law, and the waivers contained therein are enforceable under Tennessee law.  
*See, e.g., Nashville Electric Supply Co., Inc. v. Kay Industries, Inc.*, 533 S.W.2d 306,  
309 (Tenn. App. 1975) (*perm. app. denied*).

**B. Alliance's Claim**

Mr. Layfield's Declaration does not dispute or contradict any of the facts set forth in the Declaration of Cheryl Kaufman previously filed in this case (Docket No. 73) except that Mr. Layfield claims that, Mr. Wakefield, rather than Mr. Layfield, pursued financing from Alliance and that he believes Alliance's loan should be characterized as an investment. (Layfield Decl. ¶¶ 10 and 11.)

**C. L&B Trustee's Claim**

Mr. Layfield's Declaration does not dispute or contradict any of the facts or evidence relied on by Wellgen with respect to the L&B Trustee's claim. Instead, Mr. Layfield notes that the Minute Order was entered after L&B's bankruptcy filing and that the L&B Trustee has not provided Mr. Layfield with a "Bill of Particulars," whatever that means. (Layfield Decl. ¶¶ 13 and 14.)

**IV. ARGUMENT**

**A. Section 303's Requirements Are Not Jurisdictional.**

Mr. Layfield's argument that Section 303's requirements are jurisdictional is simply wrong. As the court in *Viola v. Krisch*, 2016 WL 4011314 (N.D. Cal. 2016), explained:

Mr. Kirsch's position is frivolous because, as the bankruptcy court noted in its January 2011 order, the Ninth Circuit has indicated that 11 U.S.C. § 303, which governs involuntary petitions, does not impose subject matter jurisdictional requirements. *See In re Rubin*, 769 F.2d 611, 614 (9th Cir. 1985) (noting, e.g., that "a debtor in an involuntary proceeding waives the requirement [in § 303] for three petitioning creditors if he fails to raise the issue in his answer"; as a waiver was permitted, this "indicates that the requirements were not truly prerequisites to subject matter jurisdiction, since parties cannot confer subject matter jurisdiction on a federal court by their consent"); *see also In re Zarnel*, 619 F.3d 156, 169 (2d Cir. 2010) (concluding that "the restrictions

of § 303 fall decisively on the nonjurisdictional side”); *In re Trusted Net Media Holdings, LLC*, 550 F.3d 1035, 1042-46 (11th Cir. 2008) (*en banc*) (holding that “§ 303(b)’s requirements are not subject matter jurisdictional” under the Supreme Court’s test as articulated in *Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006)4); Docket No. 9 (Order at 4) (noting that Mr. Viola’s reliance on *In re Quality Laser Works*, 211 B.R. 936 (9th Cir. 1997), was unavailing as it did not hold that “a failure to check a box means that there is no subject matter jurisdiction”). Rather, § 303 simply contains elements that “must be established to sustain an involuntary proceeding.” *Rubin*, 769 F.2d at 615 (noting that a bankruptcy court has jurisdiction to determine whether the § 303 requirements have been met).

*Id.*, \*3.

**B. Wellgen’s Claim is Not Subject to Bona Fide Dispute.**

Mr. Layfield mistakenly argues that Wellgen’s claim is the subject of a *bona fide* dispute because Mr. Layfield recently moved, for the second time, to set aside Wellgen’s default judgment against Mr. Layfield. Mr. Layfield filed his second motion to set aside Wellgen’s default judgment after the filing of the Involuntary Petition and in blatant violation of the automatic stay. Under 11 U.S.C. § 362(a)(1), the filing of an involuntary petition stays the commencement or continuation of any action against the debtor that was or could have been commenced prior to the filing of the involuntary petition. 11 U.S.C. § 362(a)(1); *see also Ingersoll–Rand Financial Corp. v. Miller Mining Co.*, 817 F.2d 1424, 1426 (9th Cir. 1987). Wellgen’s action against Mr. Layfield is obviously an action against the debtor, and it was obviously commenced prior to the filing of the Involuntary Petition. Thus, Wellgen’s action against Mr. Layfield was stayed, and, therefore, Mr. Layfield’s second motion to set aside Wellgen’s default judgment is a legal nullity. Legal proceedings in violation of the automatic stay are void. *See, e.g., Gruntz v. County of Los Angeles (In re Gruntz)*, 202



1 F.3d 1074, 1082 (9th Cir.2000) ("actions taken in violation of the automatic stay are  
2 void").

3 Mr. Layfield recently moved the District Court to enter an order *ex parte* staying  
4 this case. The District Court denied Mr. Layfield's motion finding that the District  
5 Court Action was stayed by the filing of the Involuntary Petition. (Docket No. 59.) A  
6 copy of the District Court's Order is attached hereto as **Exhibit B**.

7  
8 Mr. Layfield's Opposition contains a plethora of unsupported, conclusory  
9 allegations that Advocate and its counsel perpetrated a fraud on the District Court, that,  
10 as the result of such fraud, the District Court will ultimately set aside Wellgen's default  
11 judgment, and that, as a sanction for such fraud, the District Court will dismiss  
12 Wellgen's claim against Mr. Layfield with prejudice.<sup>2</sup> (Mr. Layfield's Opposition at  
13 pp. 1-5.) Mr. Layfield did not include these conclusory allegations in his Declaration  
14 and the record is utterly devoid of any evidentiary support for these conclusory  
15 allegations. Mr. Layfield's Declaration says only that he was not personally served  
16 with Advocate's complaint "in Marina del Rey." Mr. Layfield's conclusory allegations,  
17 which are unsupported by any evidence whatsoever, are insufficient to raise a genuine  
18 issue of material fact. *See* Fed. R. Civ. P. 56(c)(1); *Matsushita Elec. Indus. Co.*, 475  
19 U.S. at 586 n.11. Conclusory statements in an affidavit will not defeat a motion for  
20 summary judgment. *Yufa*, 2014 WL 11398761, \*4.  
21  
22  
23  
24

25 <sup>2</sup> Mr. Layfield has claimed he could not possibly have been in California at the time of service because he  
26 was in Costa Rica. However, at his recent deposition, he testified that he "frequently traveled back and  
27 forth between Costa Rica to California." (Layfield Dep. at p. 65, Lines 4-13). According to Mr. Layfield,  
28 he was "coming back and forth regularly." (*Id.*)



Even if, as Mr. Layfield alleges, he was not properly served, there is no requirement that a creditor have obtained a final judgment for a bankruptcy court to determine that the creditor's claim is not subject to a *bona fide* dispute. All that is required is the establishment of a right to payment. *See, e.g., In re AMC Investors, LLC*, 406 B.R. 478, 485–486 (Bankr. D. Del. 2009); *see also Platinum Fin. Servs. Corp. v. Byrd (In re Byrd)*, 357 F.3d 433, 438 (4th Cir. 2004) (definition of “claim” under the Bankruptcy Code includes a “right to payment, whether or not such right is reduced to judgment.” Therefore, the definition of claim “permits some creditors who have not reduced their claims to judgment to file involuntary petitions.”). Mr. Layfield admits he guaranteed the \$4,000,000 loan that Advocate, Wellgen's predecessor, made to L&B. (Declaration of Philip Layfield, Case No. 2:17-bk-19548-NB (Docket No. 18, ¶ 29)). Moreover, as discussed above, Mr. Layfield's Declaration does not raise any disputed issue of fact or any *bona fide* dispute regarding the validity his debt to Wellgen or the amount of that debt.<sup>3</sup>

**C. Alliance's Claim is Not Subject to Bona Fide Dispute.**

Mr. Layfield's Opposition to Wellgen's Summary Judgment Motion contains the following unsupported, conclusory allegations regarding Alliance's claim:

Even if a judgment may or may not be in existence, the calculations supporting the balance due are not accurate because the amounts owed are not accurate. It is impossible to determine what cases have been collected on since the L&B bankruptcy, what the interest rate should be and what amounts if any have or should be satisfied by proceeds coming into the L&B estate.

---

<sup>3</sup> At his recent deposition, Mr. Layfield invoked his Fifth Amendment privilege when asked whether he submitted fraudulent draw requests to Advocate. (Layfield Dep. at pp. 149, Line 19-150, Line 9.)

(Mr. Layfield's Opposition at p. 7.) Mr. Layfield did not include these conclusory allegations in his Declaration and the record is utterly devoid of any evidentiary support for these conclusory allegations. Mr. Layfield's conclusory allegations, which are unsupported by any evidence whatsoever, are insufficient to raise a genuine issue of material fact. *See* Fed. R. Civ. P. 56(c)(1); *Matsushita Elec. Indus. Co.*, 475 U.S. at 586 n.11. Conclusory statements in an affidavit will not defeat a motion for summary judgment. *Yufa*, 2014 WL 11398761, \*4.

**D. The L&B Trustee's Claim is Not Subject to Bona Fide Dispute.**

Mr. Layfield's lone argument regarding the L&B Trustee's claim is that the Minute Order entered on March 28, 2018, in the Nguyen Proceeding could not have possibly impacted L&B because L&B's bankruptcy case was pending and the automatic stay was in effect at the time. In the Minute Order, the court found that, as the result of Mr. Layfield's misappropriation of Ms. Nguyen's settlement proceeds, L&B was not entitled to recover any attorney's fees from the recovery. Regardless of when the Minute Order was entered, it is undisputed that Mr. Layfield's conversion of Ms. Nguyen's settlement proceeds deprived L&B of the right to receive any attorney's fees from Ms. Nguyen's recovery.

Mr. Layfield does not address Wellgen's argument that Mr. Layfield misappropriated and converted \$2,314,942.15 of Ms. Nguyen's settlement proceeds and is liable to L&B for the amount that be misappropriated and converted. There is no dispute that Mr. Layfield misappropriated \$2,314,942.15 of Mrs. Nguyen's settlement proceeds. As set forth in Wellgen's Summary Judgment Motion, the California State Bar Court found that Mr. Layfield misappropriated \$2,314,942.15 of Ms. Nguyen's settlement proceeds and that finding is binding on Mr. Layfield. L&B is liable to Ms.

1 Nguyen for Mr. Layfield's misappropriation, and, in turn, Mr. Layfield is liable to  
2 L&B. *See In re O'Neil*, 1997 WL 615661 (Bankr. Minn. 1997) (lawyer that  
3 misappropriated client funds liable to law firm for amounts misappropriated under  
4 doctrines of conversion, indemnity and implied contract).

5 Mr. Layfield previously claimed that he is not liable to L&B for conversion of  
6 Ms. Nguyen's settlement proceeds because he did not personally benefit from such  
7 conversion. Mr. Layfield makes no such assertion in his opposition to Wellgen's  
8 Summary Judgment Motion or in his Declaration. Indeed, Mr. Layfield's Declaration  
9 makes no mention of Ms. Nguyen other than his note that the Minute Order was entered  
10 after L&B's bankruptcy was filed.  
11

12 Mr. Layfield offers no evidence to contradict Mr. Speidel's Affidavit that Ms.  
13 Nguyen's settlement proceeds were transferred from L&B's trust account to L&B's  
14 operating account and that at least \$1,000,000 of Ms. Nguyen's settlement proceeds  
15 were then transferred from L&B's operating account to Mr. Layfield's personal  
16 account. Between August 30, 2016, and December 12, 2016, Mr. Layfield transferred  
17 first from L&B's trust account to an L&B operating account and then to his personal  
18 USAA bank account the aggregate amount of \$685,000. (Speidel Affidavit ¶ 31.)  
19 Between October 16, 2016, and February 28, 2017, Mr. Layfield wired from L&B's  
20 trust account directly to Mr. Layfield's personal USAA account, the aggregate amount  
21 of \$317,500. *Id.*  
22  
23

24 At his recent deposition, Mr. Layfield exercised his Fifth Amendment privilege  
25 and refused to answer any questions regarding Ms. Nguyen's or her settlement  
26 proceeds. (Layfield Dep. at pp. 77, Line 24-78-4, 123, Line 15-125, Line 22.) When  
27 asked whether he transferred Ms. Nguyen's settlement proceeds to himself, Mr.  
28

Layfield exercised his Fifth Amendment privilege and refused to answer the questions. (*Id.*) Similarly, when asked whether he converted assets of L&B and/or L&B's clients, Mr. Layfield exercised his Fifth Amendment privilege and refused to answer the questions. (*Id.*) Wellgen is entitled to the adverse inference that Mr. Layfield did in fact convert L&B's assets and Ms. Nguyen's settlement proceeds. *See, e.g., Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1264 (9th Cir. 2000) (adverse inference may be drawn from invocations of the privilege against self-incrimination where silence is countered by independent evidence of the fact being questioned).

**E. Mr. Layfield is Not Entitled to Additional Discovery.**

In Mr. Layfield's Opposition, Mr. Layfield claims that he needs additional discovery, but he did not even attempt to comply with Fed R. Civ. Pro. 56(d).

A party invoking Rule 56(d) “bears the burden of showing ‘what facts [it] hopes to discover to raise a material issue of fact.’” *Terrell v. Brewer*, 935 F.2d 1015, 1018 (9th Cir. 1991) (quoting *Hancock v. Montgomery Ward Long Term Disability Trust*, 787 F.2d 1302, 1306, n.1 (9th Cir. 1986)). “Compliance with [Rule 56(d)] requires more than a perfunctory assertion that the party cannot respond because it needs to conduct discovery. In that regard, references in memoranda and declarations positing a need for discovery do not constitute a proper motion under [Rule 56(d)]. Rather, that rule requires affidavits setting forth with particularity: (1) why the party opposing summary judgment cannot respond; (2) the particular facts that the party reasonably expects to obtain in further discovery; and (3) how the information reasonably expected from its proposed discovery requests could be expected to create a genuine issue of material fact that would defeat the summary judgment motion.” *Adams v. Allstate Insurance Co.*, 187 F. Supp. 2d 1207, 1213 (C.D. Cal. 2002); *see also Tatum v. City and County of San Francisco*, 441 F.3d 1090, 1100 (9th Cir. 2006) (“A party requesting a continuance pursuant to [Rule 56(d)] must identify by affidavit the specific facts that further discovery would reveal, and explain why those facts would preclude summary judgment.”). “The party

1 seeking additional discovery also bears the burden of  
2 showing that the evidence sought exists.” *Terrell*, 935  
3 F.2d at 1018. “Failure to comply with the requirements of  
4 [Rule 56(d)] is a proper ground for denying discovery and  
5 proceeding to summary judgment.” *Brae Transportation,*  
6 *Inc. v. Coopers & Lybrand*, 790 F.2d 1439, 1443 (9th Cir.  
7 1986). “Moreover, even where these prerequisites are  
8 met, a court may refuse to continue hearing a summary  
9 judgment motion where a party has had the opportunity to  
10 conduct discovery in a diligent fashion, but failed to do  
11 so.” *Adams*, 187 F. Supp. 2d at 1213 *citing Stitt v.*  
12 *Williams*, 919 F.2d 516, 526 (9th Cir. 1990).

13 *Beazley Insurance Company, Inc. v. Niami*, 2012 WL 12845104, \*1 (C.D. Cal. 2012).

14 Mr. Layfield not only failed to comply with Rule 56(d), Mr. Layfield admitted at his  
15 recent deposition that, although he could have done so, he has made no effort  
16 whatsoever to obtain discovery in this case. (Layfield Dep. at pp. 166, Line 14-167,  
17 Line 4.)

#### 18 **V. JOINDERS IN INVOLUNTARY PETITION**

19 Since the filing of the Involuntary Petition, four (4) additional creditors of  
20 Mr. Layfield have joined in the Involuntary Petition pursuant to 11 U.S.C. § 303(c).  
21 These creditors are Mr. Mitchell Middleton, Mr. Art Hosmer, Mr. Bert Rosenquist and  
22 Mr. Rodney Pimentel. (Docket Nos. 121, 122, 123, 124, 134 and 135). All four (4)  
23 creditors are former clients of L&B, and all four (4) creditors hold unsecured claims  
24 against Mr. Layfield arising from Mr. Layfield’s conversion of their settlement  
25 proceeds. (*Id.*). Mr. Middleton holds an unsecured claim in the amount of  
26 \$450,414.96, Mr. Hosmer holds an unsecured claim in the amount of \$225,000.00, Mr.  
27 Rosenquist holds an unsecured claim in the amount of \$14,451.00, and Mr. Pimentel  
28 holds an unsecured claim in the amount of \$742,442.15. (*Id.*) All four (4) claims are  
properly supported by declarations. (*Id.*)

Moreover, Mr. Pimentel's claim was a subject of the State Bar Court Order where Mr. Layfield was found to have misappropriated Mr. Pimentel's funds and was ordered to make restitution. (*See* State Bar Court Order.) At his recent deposition, Mr. Layfield testified he had not made restitution to Mr. Pimentel. (Layfield Dep. at p. 133, Lines 4-15.)

Mr. Layfield cannot dispute any of these claims. At his recent disposition, Mr. Layfield exercised his Fifth Amendment privilege and refused to answer any questions regarding the claims of any of these creditors. (Layfield Dep. at pp. 166, Line 3-168, Line 2.) Having done so, Mr. Layfield cannot now offer his own contrary testimony regarding the claims of any of these creditors. The Fifth Amendment privilege cannot be invoked as a shield to refuse to answer questions in a deposition while discarding it for the limited purpose of making statements to defeat summary judgment. *See, e.g., U.S. v. \$133,420.00 in U.S. Currency*, 672 F.3d 629, 641 (9<sup>th</sup> Cir. 2012). Moreover, because the creditors' claims that Mr. Layfield converted their settlement proceeds are supported by other evidence, Wellgen is entitled to the adverse inference that Mr. Layfield did in fact convert their settlement proceeds. *See, e.g., Glanzer*, 232 F.3d at 1264 (adverse inference may be drawn from invocations of the privilege against self-incrimination where silence is countered by independent evidence of the fact being questioned).

## VI. CONCLUSION

For the reasons set forth above, Wellgen prays that this Court grant Wellgen's Summary Judgment Motion, enter the order for relief requested in the Involuntary

Petition and grant such further relief as it deems just and proper.

Dated: December 3, 2018

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Attorneys for Wellgen Standard,  
LLC

1 UNITED STATES BANKRUPTCY COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3 LOS ANGELES DIVISION

4 - - -

5  
6 IN RE: PHILIP JAMES LAYFIELD, Debtor

7 Case NO. 2:18-bk-15829-NB

8 - - -

9 November 27, 2018

10 - - -

11 Oral deposition of PHILIP J. LAYFIELD,  
12 taken pursuant to notice, held at Regus, 1000  
13 N. West Street, Suite 1200, Wilmington,  
14 Delaware 19801, commencing at 9:30 a.m., on  
15 the above date, before Jennifer P. Miller, RPR,  
16 CCR, CRR #30XI00235100 and Notary Public.

17

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19

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21

22

23

24

25



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22

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25

1 would have been significantly more funds  
2 available to pay your clients, to pay the  
3 clients of Layfield & Barrett.

4 And if that had happened, I  
5 could have stayed involved in the process. I  
6 could have assisted. I would have frequently  
7 traveled back and forth from Costa Rica to  
8 California. And then the United States  
9 government would not have been able to float  
10 the false allegation that I had fled the  
11 country because I had never intend to flee the  
12 country. I was coming back and forth  
13 regularly.

14 And so had we taken a different  
15 path, Mr. Jones, the U.S. Attorney's office,  
16 who apparently is nothing more than a bunch of  
17 lemons because they follow any idiot that tells  
18 them something, the U.S. Attorney's Office  
19 would not have been giving the ammunition to  
20 call me a flight risk and to allege that I had  
21 stolen \$11 million and hidden that \$11 million  
22 in secret offshore accounts that I was going to  
23 use to live a life on the lam for the rest of  
24 my life.

25 And so that's what -- that's

1 A. I'll give you an example of a  
2 calculation. I know you want to jump ahead.

3 Q. I want a number.

4 A. I'm going to give you a number. I'm  
5 going to give you the support for that number  
6 as well.

7 What I understand is that the  
8 sum of all of the clients that complained to  
9 the California State Bar, there was a number  
10 that was included in Special Agent Speidel's  
11 affidavit, which mentioned something around  
12 \$8.9 million.

13 Q. It was 8.6.

14 A. Okay. Now, of that 8.6, those are  
15 gross settlement proceeds. Okay? So from what  
16 I understand is that that number was the total  
17 amount the clients were claiming were their  
18 settlement amounts.

19 Now, when you take those  
20 settlement amounts and you reduce those  
21 settlement amounts for attorney's fees and you  
22 reduce those settlement amounts for cost  
23 advance, which obviously would have been used  
24 to compensate your client, the net number,  
25 assuming every one of those claims was valid,

1 the number would have been probably less than  
2 four million. Now when a closer examination of  
3 that schedule that was provided by Speidel will  
4 show that there were certain duplicate entries  
5 of that 8.7.

6           There were entries that were  
7 also completely false. As an example, there  
8 was 1,086,000 of that 8.7 was a complaint by a  
9 client named Timothy Blevins. Mr. Blevins was  
10 paid in full. He had a dispute of about  
11 \$30,000 based on liens, cost, et cetera, he  
12 made his complaint, and it was listed in that  
13 8.7, you know, 1,086,000, but he had been paid  
14 everything that he was entitled to other than  
15 \$30,000. So when you take out Mr. Blevins's  
16 number, which shouldn't have been included, you  
17 now go down to 7.7.

18           There were duplicate entries  
19 with respect to the Pimentel matter. There was  
20 a gross amount with Pimentel, and there was an  
21 attorney that was entitled referral fees. He  
22 doubled it up. The Pimentel matter, which only  
23 settled for a million dollars, was listed in  
24 there at, like, 1.7 million because there were  
25 two entries. And there were several of these

1 where there was duplicate entries, so I can't  
2 tell you for sure without having, like, the  
3 forensic accountant go through and verify every  
4 single one of one the numbers that was included  
5 in Speidel's number, and so I think it's  
6 substantially less than four million.

7 Q. Do you know whether Mr. Speidel's  
8 number was a gross or net number?

9 A. It was gross.

10 - - -

11 (Whereupon, an off-the-record  
12 discussion was held.)

13 - - -

14 BY MR. JONES:

15 Q. How do you know that?

16 A. Well, when I looked at the first few  
17 entries, like the Blevins and the Pimentel,  
18 those appeared to be the gross numbers.

19 Q. You don't have that document in your  
20 possession or control?

21 A. I don't.

22 Q. Why were the Layfield & Barrett  
23 clients owed anything?

24 A. Because they had settlement monies  
25 that were checked by Layfield & Barrett.

1 declaration in support of the involuntary

2 petition including accounting all of its

3 documents. Did you review that?

4 A. I probably did review it at some

5 point.

6 Q. Do you have any basis as we sit here

7 today to dispute anything Alliance said in that

8 declaration?

9 A. Other than verifying the

10 calculations, no.

11 Q. Now, you say in your declarations for

12 your motion to dismiss that Mr. Pachulski has

13 no viable claims against you personally?

14 A. Correct.

15 Q. Now, as you will recall,

16 Mr. Pachulski, the trustee's claim, arises out

17 of the allegation or the fact that Ms. Nguyen's

18 monies, client funds, were transferred from the

19 L&B account trust account to the L&B operating

20 account and then transferred to you; do you

21 recall that?

22 A. Do I recall that there's an

23 allegation by Nguyen about monies?

24 Q. Were her funds, client funds,

25 transferred to the L&B operating account and

123



1 then in turn transferred to you.

2 A. So, again, as it specifically relates  
3 to matters that are subject to the indictment,  
4 I'm not going to answer.

5 However, what I have answered is  
6 that -- I've answered this previously -- is  
7 that because the Nguyen matter was stayed as to  
8 Layfield & Barrett, there has been no adverse  
9 determination on any level regarding the Nguyen  
10 matter vis-a-vis Layfield & Barrett. And so  
11 the trustee has made these claims that somehow  
12 the minute order invalidates the  
13 attorney-client agreement that was signed with  
14 Nguyen, but because of the stay, it's improper  
15 for a state court judge to issue any rulings  
16 that impact Layfield & Barrett in a state court  
17 case where there is a stay currently applicable  
18 to Layfield & Barrett.

19 Q. Mr. Layfield, the claim that the  
20 trustee makes against you in the involuntary  
21 petition is the conversion of L&B's funds, the  
22 transfer of Ms. Nguyen's client funds, to the  
23 L&B account and then to you. That's the claim  
24 of conversion. Did that occur or did it not?

25 A. As I previously stated, money is



1 fungible. I had an employment agreement. So  
2 when I had previously explained that issue, as  
3 I've explained is, without a full accounting of  
4 all of the monies that went into Layfield &  
5 Barrett by me or on my behalf and all of the  
6 money that went out of Layfield & Barrett, it  
7 is virtually impossible to determine whether  
8 what I received was greater than or less than  
9 what I was entitled to under my employment  
10 compensation arrangement.

11 Q. That's not my question. Let's go  
12 back and let's be sure whether you will or will  
13 not answer the question.

14 Isn't it true, Mr. Layfield,  
15 that Layfield & Barrett at your direction  
16 transferred money from Mrs. Nguyen's client  
17 funds in the trust account to the operating  
18 account and then in turn to you; is that not  
19 true?

20 A. On the advice of counsel, I'm not  
21 going to answer that specific question related  
22 to the indictment.

23 Q. Okay. So when you say in your  
24 declaration that you did not personally benefit  
25 from the misappropriation of Nguyen's funds,

1 received notice of the bar date.

2 Can I ask you to take look at  
3 paragraph 37 of Exhibit 4. In paragraph 37, it  
4 says Layfield personally benefited from JN's  
5 settlement proceeds via wire transfers and kept  
6 such usage from JN by personally and without  
7 involvement associated with L&B concealing his  
8 activity; do you see that?

9 A. I saw it, yeah.

10 Q. Do you disagree with those  
11 allegations?

12 A. Anything that you asked me related to  
13 this criminal complaint, I'm going to plead the  
14 Fifth on.

15 Q. Now, you say you were owed  
16 compensation, correct? How often was that  
17 compensation paid, was there a schedule for  
18 payment of compensation?

19 A. I think that there was sort of a  
20 general sort of hopeful schedule, but it wasn't  
21 adhered to.

22 Q. Okay. So is it true that you were  
23 paid whenever L&B could find some money to make  
24 a payment to you?

25 A. I wouldn't say that that assessment

1 there, yet you are continuing to play this  
2 game.

3 - - -

4 (Whereupon, Exhibit 6 was  
5 marked for identification.)

6 - - -

7 BY MR. JONES:

8 Q. Could I ask you to take a look at  
9 what the Court Reporter has marked as Exhibit  
10 6.

11 A. Okay.

12 Q. Do you recognize Exhibit 6?

13 A. I don't.

14 Q. Would you take a look at it.

15 A. I'm taking a look at it.

16 Q. Now, do you recognize exhibit 6?

17 A. It looks like one of the standard  
18 documents that was created.

19 Q. When you requested this draw for a  
20 1,144,305.17 from Advocate, did you disclose to  
21 them that you had been using or were using  
22 client funds to fund your operations?

23 A. As it relates to this specific  
24 document, which has relation to pending  
25 criminal matters, I'm going to exercise my  
149

1 Fifth Amendment.

2 Q. In fact, Mr. Layfield, isn't it true  
3 that at the time you submitted this withdraw  
4 request, Layfield & Barrett had been using  
5 client funds to finance its operations for  
6 sometime, correct?

7 A. Again, because it relates to a  
8 pending criminal matter, I'm going to exercise  
9 my Fifth Amendment.

10 Q. Do you recall providing financial  
11 statements to Advocate shortly before  
12 submitting this draw request?

13 A. I don't recall that.

14 Q. Do you recall whether those financial  
15 statements disclosed the fact that you were  
16 using client funds to finance your operations?

17 A. Again, without having the financial  
18 statements and without knowing the context, I  
19 can't say.

20 Q. But, Mr. Layfield, you represented in  
21 here that the representations and warranties of  
22 borrower contained in the agreement are true  
23 and correct as of the date of this request for  
24 advance.

25 A. Again, because it relates to a

1 A. The accounting team in India

2 generated projections.

3 Q. The accounting team in India?

4 A. Yes.

5 Q. Did you review those projections?

6 A. At different times, yes.

7 Q. Did you do any diligence to determine

8 whether or not they were correct?

9 A. Yeah, to the best of my ability.

10 Q. You believed them to be correct at

11 the time?

12 A. I believed that there were always

13 areas that needed improvement in projections.

14 And so I can't tell you at what specific time

15 what I believed and didn't believe, but I

16 believed that we were constantly working

17 towards getting the best possible projections

18 that were available.

19 Q. What precautions did you take to make

20 sure that L&B creditors were paid in the event

21 that your protections turned out to be

22 incorrect?

23 A. Well, there's always the notion of

24 growing concern. There was always the notion

25 that to the extent there was shortfalls there

1 Fifth Amendment?

2 A. Correct.

3 Q. Mr. Layfield, do you recognize the  
4 name Art Hosmer, H-O-S-M-E-R?

5 A. Sounds familiar, but I can't place  
6 him.

7 Q. Do you recall whether he was a client  
8 of Layfield & Barrett?

9 A. I can't recall.

10 Q. Mr. Hosmer asserts that you converted  
11 \$225,000 of settlement proceeds that belonged  
12 to him.

13 A. Fifth Amendment.

14 Q. You're refusing to answer any  
15 questions about Mr. Hosmer's claim?

16 A. Fifth Amendment.

17 Q. Mr. Layfield, do you recognize the  
18 name Mitchell Tyler Middleton?

19 A. I do.

20 Q. Was he a client of Layfield &  
21 Barrett?

22 A. Most likely.

23 Q. Do you know?

24 A. I don't know what the legal argument  
25 was regarding two dash 200s or representation



2 Q. Mr. Middleton asserts that you  
3 converted approximately \$450,000 of his client  
4 funds. Did you do that?

5 A. Fifth Amendment.

6 Q. You're refusing to answer any  
7 questions about Mr. Middleton's claims based on  
8 Fifth Amendment?

9 A. Fifth Amendment.

10 Q. Mr. Layfield, you do recognize the  
11 name Rodney A. Pimentel, do you not?

12 A. I recognize the name.

13 Q. Was he a client of Layfield &  
14 Barrett?

15 A. What the exact relationship was, I  
16 can't tell you for certain.

17 Q. Mr. Pimentel asserts that you  
18 converted \$742,000 in settlement proceeds that  
19 belonged to him; isn't that true?

20 A. Fifth Amendment.

21 Q. Mr. Layfield, do you recognize the  
22 name Bert Rosenquist?

23 A. No.

24 Q. Do you recall whether he was a client  
25 of Layfield & Barrett?

1 A. I can't recall.

2 Q. Like the others, Mr. Rosenquist  
3 asserts that you converted his settlement  
4 proceeds. Did you do that?

5 A. Fifth Amendment.

6 - - -

7 (Whereupon, Exhibit 8 was  
8 marked for identification.)

9 - - -

10 BY MR. JONES:

11 Q. Just to be clear, Mr. Layfield, you  
12 are refusing to answer any questions regarding  
13 the claims of former L&B clients that I just  
14 mentioned on the grounds of Fifth Amendment; is  
15 that correct?

16 A. Correct.

17 Q. Do you recognize Exhibit 8,  
18 Mr. Layfield?

19 A. I do.

20 Q. What is Exhibit 8?

21 A. Fifth Amendment.

22 Q. Exhibit 8 is the Fifth Amendment?

23 It's longer than I recall.

24 A. Since it's relating to a criminal  
25 matter, Fifth Amendment.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No.	SACV 17-01628 AG (DFMx)	Date	November 28, 2018
Title	ADVOCATE CAPITAL, INC. v. PHILIP J. LAYFIELD		

Present: The Honorable	ANDREW J. GUILFORD		
Lisa Bredahl	Not Present		
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	

**Proceedings: [IN CHAMBERS] ORDER REGARDING DEFENDANT'S  
EX PARTE APPLICATION (DKT. 58)**

Philip Layfield's *ex parte* application is DENIED. The January 14, 2019 hearing is VACATED due to an automatic stay during bankruptcy proceedings against Layfield. A status conference will be held on **April 29, 2019 at 9:00 a.m.**

This case concerns a commercial guaranty dispute. Plaintiff Advocate Capital, Inc. agreed to lend money to Defendant Philip Layfield's law firm, Layfield & Barrett, APC ("L&B"). Defendant guaranteed the loan. When an involuntary bankruptcy petition was filed regarding L&B, Plaintiff unsuccessfully sought repayment of the loan from Layfield. Plaintiff then filed this lawsuit against Layfield. Layfield never appeared. The Court eventually entered a default judgment for Plaintiff. (Dkt. 35.) Representing himself, Layfield then filed a motion to set aside the default judgment. (Dkt. 41.) The Court denied that motion.

Layfield moved for reconsideration of the order denying his motion to set aside judgment, and a hearing was held on October 22, 2018. (Dkt. 53.) The Court questioned Layfield under oath regarding service of process in this action, but the hearing was continued to January 14, 2019 to allow for further questioning of Layfield and other potential witnesses. Layfield now moves *ex parte* for a protective order, temporary stay of ancillary proceedings, and an order to compel witness appearances at the evidentiary hearing. (Dkt. 58.) Plaintiff did not file an opposition.

In short, Layfield broadly accuses several people associated with Advocate Capital, including its lead counsel, of engaging in perjury or other unlawful behavior. Confident that he will

UNITED STATES DISTRICT COURT  
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**CIVIL MINUTES – GENERAL**

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prevail on his motion for reconsideration, Layfield urges that discovery in a related involuntary bankruptcy proceeding against him should be stayed pending resolution of this action. *See In re Layfield*, Case No. 2:18-bk-15829-NB (Bankr. C.D. Cal. 2018). He also seeks a court order compelling five witnesses to appear at the continued hearing on his reconsideration motion.

Though no notice of automatic bankruptcy stay was filed in this Court, Plaintiff's position is that the filing of an involuntary bankruptcy petition against Layfield on May 21, 2018 effected an automatic stay of this case. *See* Plaintiff's November 16, 2018 Status Report (Dkt. 57) (attaching Order Appointing Interim Trustee). Under 11 U.S.C. § 362(a), such a filing "operates as a stay" of any actions against the debtor. Plaintiff's status report explains that the bankruptcy court is set to hear several motions regarding Layfield's bankruptcy – including a motion to dismiss the bankruptcy and to give Layfield (instead of a trustee) the ability to litigate it – which might affect the automatic stay of this action. Plaintiff suggests that the evidentiary hearing set for January 14, 2019 be stayed until after the bankruptcy motions are resolved.

Though it would have been prudent for Plaintiff to file a notice of stay as soon as bankruptcy proceedings were filed, the Court finds this action is subject to an automatic stay. The evidentiary hearing set for January 14, 2019 is VACATED. If there is a change in the Layfield bankruptcy that lifts the automatic stay, Plaintiff must immediately notify the Court. At that point, the Court will set a hearing date on Layfield's reconsideration motion.

Regarding Layfield's other arguments and requests for relief, the Court finds them to be without merit and DENIES Layfield's *ex parte* application. (Dkt. 58.)

Initials of Preparer                      : 0  
lmb

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

**650 Town Center Drive, Suite 600, Costa Mesa, California 92626**

A true and correct copy of the foregoing document entitled (*specify*): **REPLY IN SUPPORT OF WELLGEN STANDARD, LLC'S MOTION FOR SUMMARY JUDGMENT** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **December 3, 2018**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) **December 3, 2018**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **December 3, 2018**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

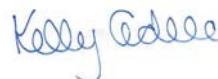
The Honorable Neil Bason, 255 E. Temple Street, Los Angeles, CA 90012

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

December 3, 2018

Kelly Adele  
Printed Name



Signature

**VIA EMAIL**

Philip J. Layfield  
c/o Maximum Legal Holdings, LLC  
8 The Green, Suite 6426  
Dover, DE 19901  
Email: phil@maximum.global

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